United Nations E/C.12/2014/SR.6

Economic and Social Council

Distr.: General
2 May 2014

Original: English

Committee on Economic, Social and Cultural Rights

Fifty-second session

Summary record of the 6th meeting
Held at the Palais Wilson, Geneva, on Wednesday, 30 April 2014, at 3 p.m.

Chairperson: Mr. Kedzia

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The meeting was called to order at 3.15 p.m.

Consideration of reports

(a) Reports submitted by States parties in accordance with articles 16 and 17 of the Covenant (*continued*)

Initial report of Indonesia (E/C.12/IDN/1; E/C.12/IDN/Q/1 and Add.1; HRI/CORE/IDN/2010)

1. *At the invitation of the Chairperson, the delegation of Indonesia took places at the Committee table.*

2. **Ms. Harkrisnowo** (Indonesia), introducing her country's initial report (E/C.12/IDN/1), said that it had been prepared through a discussion and consultation process involving a wide range of stakeholders, including provincial governments and civil society organizations. That process had been conducted within the framework of the National Human Rights Action Plan and formed part of an integrated approach designed to mainstream human rights in national development policies. Her comments would highlight developments subsequent to the drafting of the report.

3. Several pieces of legislation had been enacted in areas relevant to Covenant rights. They included laws on the national health system, housing and trade, and regulations governing, among other things, corporate social and environmental responsibility, health insurance subsidies and the inclusion of local languages in the school curriculum.

4. At the international level, her Government had ratified a further four human rights instruments. They were, in chronological order of ratification, the Convention on the Rights of Persons with Disabilities, the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict and the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography. Their ratification would further strengthen implementation of many aspects of the Covenant.

5. Under the National Human Rights Action Plan, the Government continued to ensure systematic improvement in the promotion and protection of human rights through planning and resource allocation in the public policy field. To date, over 400 subnational committees had been established to implement the Plan, with regular capacity-building training programmes being organized for committee members. The 2011–2014 Plan provided for enhanced implementation of Covenant norms and a complaints mechanism allowing the public to lodge grievances on human rights issues.

6. Her Government was working hard to translate its human rights commitments into a range of policies, measures and actions. While much had been achieved in recent years, a lot remained to be done to ensure the progressive realization of economic, social and cultural rights in Indonesia. It was the Government's belief that the dialogue with the Committee would contribute significantly to its efforts to address any gap between commitment and implementation in that area.

7. **Mr. Abashidze** (Country Rapporteur) said that the Committee would welcome further updated information enabling it to have a clearer picture of the situation of economic, social and cultural rights in the State party. He wished to know whether the Covenant could be directly invoked before the courts, in particular courts of general jurisdiction and courts in the autonomous regions, and, if so, whether the delegation could provide examples of specific cases. Did any mechanism exist to prevent or resolve conflict

between domestic law and Covenant obligations? Given that much domestic legislation dated from the 1960s, did all Covenant rights enjoy full legal protection?

8. The various human rights commissions established by the State had broad mandates and very large memberships. He would like to know whether they received adequate funding and whether they were able to operate effectively with such high levels of staff. In the absence of clear obligations on government bodies to respond to requests for information from such commissions, how was it possible for them to fulfil their mandates properly? Finally, he asked whether Law No. 39 of 1999 on Human Rights complied fully with article 2 of the Covenant.

9. **Mr. Atangana** said that, according to information received by the Committee, the State party's judicial system was weak and susceptible to interference from the executive and the military. He therefore wished to know what was being done to establish an independent judicial system capable of enforcing Covenant rights. In view of reports of widespread corruption and impunity in the State party, he would like to know whether any measures had been taken to combat and prosecute corruption, in particular corruption involving senior Government officials, and, if so, whether the delegation could provide specific examples.

10. **Ms. Bras Gomes** said it was her understanding that, since Law No. 39 of 1999 failed to clearly define and prohibit discrimination, it contained no provisions for sanctions in that regard. She would welcome the delegation's comments on that matter. If that was indeed the case, would the State party envisage a new anti-discrimination framework law covering all the grounds of discrimination referred to in article 2, paragraph 2, of the Covenant? In that connection, she asked whether the State party would take account of the Committee's general comment No. 20, which provided for two further grounds of discrimination, namely sexual orientation and gender identity, and a person's social and economic situation.

11. Evidence-based information available to the Committee indicated that large-scale development projects had led to human rights violations as a result of, among other things, a lack of relevant legislation or a failure to implement existing legislation, inconsistency of guidance across various institutions and, at times, an absence of informed consent. She would therefore like to know what measures were in place to conduct human rights impact assessments prior to, for example, granting mining concessions or authorizing large development projects.

12. Although the State party report referred to a gender mainstreaming strategy and gender-responsive budgeting, there appeared to be no mention of any specific legislation on gender equality. She wished to know whether such legislation had been enacted and what the status was of a proposed bill on equality and gender justice.

13. **Mr. Schrijver**, noting that the State party had indicated in its replies to the Committee's list of issues (E/C.12/IDN/Q/1/Add.1) that Covenant provisions could be directly referred to by judges, said that he would like to know what recourse was available to citizens to invoke the Covenant. In addition, he wished to know the extent to which the judiciary was aware of Covenant rights and, in particular, whether those rights were covered in judicial training programmes.

14. **Ms. Shin**, while welcoming the consultations held by the State party with civil society organizations during the preparation of the report, said it was essential that the consultation process should involve genuine participation by those bodies and not be a merely formalistic gesture. Such an approach was fundamental for the protection and promotion of human rights in the State party.

15. As to discrimination issues, it was vital that the State party should review its domestic legislation in order to eliminate any discriminatory provisions, particularly with respect to persons with disabilities, sexual minority groups and women. She would like to know whether Government programmes, policies and plans, such as the National Action Plan on Disabilities, systematically provided for such reviews. In addition, the State party should enact new laws aimed at ensuring, among other things, gender equality. She would welcome information on any proposed new legislation in that connection. She regretted the absence of a representative of the State Minister of Women's Empowerment and Child Protection in the State party's delegation.

16. **Mr. Kerdoun**, referring to the burden of Government debt mentioned in the State party's report, said that he would like to know the origin and size of that debt. Was it a handicap to economic development and, if so, what measures did the Government envisage to reduce the debt burden? Would any such measures have an impact on the realization of Covenant rights? Noting from the report that the Government provided technical cooperation assistance to developing countries, he enquired about the type of support that it was able to furnish in that regard.

17. **Mr. Sadi** said he, too, wished to know the extent to which lawmakers and policymakers were aware of the provisions of the Covenant and whether the laws and action plans adopted on economic, social and cultural rights were in conformity with the Covenant. He asked whether there were any cases in which the courts had based their decisions on the Covenant. Given the size and geography of Indonesia, he wondered how the State ensured that all local governments applied the Covenant. He asked whether the traditional communities mentioned by the delegation were considered to be indigenous peoples. He was concerned about the conditions attached to the respect and recognition of Masyarakat Hukum Adat customary land, as stated in the written replies to the list of issues, and sought assurances in that regard.

18. Noting that Islam advocated differential treatment for men and women, he asked whether Indonesia, as a Muslim country, had succeeded in reconciling religious beliefs with the principles of gender equality and non-discrimination. He enquired whether human rights education had been introduced in school curricula. Noting that Indonesia was rich in forest resources, he asked to what extent environmental concerns were taken into account in forest management practice.

19. **Mr. Abdel-Moneim** asked whether the grounds for restricting rights, as set out in article 28J, paragraph 2, of the Constitution, applied only to civil and political rights or also to economic, social and cultural rights. Rather than the State's budgetary capacity limiting the fulfilment of economic, social and cultural rights, it was that budgetary capacity that should be expanded.

The meeting was suspended at 4.15 p.m. and resumed at 4.35 p.m.

20. **Mr. Anshor** (Indonesia) admitted that it was difficult to find court decisions that were based directly on the Covenant but said that many court decisions did make reference to the provisions of the Covenant. The Government was continuously working with the Supreme Court and civil society organizations to integrate the provisions of human rights instruments into the training materials developed for members of the judiciary.

21. **Ms. Harkrisnowo** (Indonesia) said that all laws were required to conform to human rights norms and principles and that the Government had developed relevant guidelines on the drafting of legislation. Most commissions were made up of 5 to 9 commissioners, though the National Human Rights Commission (Komnas HAM) was required by law to comprise 35 commissioners. However, since that number was believed to be too high, only 13 commissioners had been elected in the most recent elections to the Commission. While

the high number of commissions did place a financial burden on the State, civil society demanded that they should continue to operate.

22. The National Human Rights Commission planned to review Law No. 39 of 1999 on Human Rights and hoped to bring it into line with the Committee's general comment No. 20. During the period of reform beginning in 1998, great efforts had been made to eliminate interference in the justice system by military and public officials, and a number of high-level officials had been convicted of corruption and punished. The bill on gender equality and justice was currently being debated in Parliament, and she hoped that it would be adopted by the end of 2014. The Government aimed to involve NGOs and civil society organizations in many human rights programmes it conducted. A number of national laws were currently being reviewed, including those relating to persons with disabilities.

23. **Mr. Nahar** (Indonesia) said that a national action plan on persons with disabilities covering the period 2014–2019 had been prepared and was awaiting the approval of the President. Five challenges had been identified in that regard: the establishment and strengthening of institutions to implement the plan; rules and regulations; education and dissemination of information; fulfilment of the rights of persons with disabilities; and the review and reporting of data.

24. **Ms. Harkrisnowo** (Indonesia) said that the Marriage Law was currently being reviewed. She recognized that much remained to be done to bring national laws into line with human rights instruments to which Indonesia was a party.

25. **Mr. Wibowo** (Indonesia) said that his country's total debt, public and private, currently stood at US$ 264 billion. In the past, individual government departments had been allowed to seek loans directly from the World Bank, resulting in crippling levels of debt. During the reform period, however, regulations had been introduced requiring Parliament to approve all foreign debt incurred. The Government had set a target of reducing the debt to 21.8 per cent of gross domestic product in 2014, with a further reduction to 18.7 per cent by 2016.

26. While Indonesia had relied heavily on outside technical and financial assistance from 1967 to 1982, it had also become a provider of technical assistance to developing countries through South-South cooperation, thanks to the economic progress it had achieved in the 1980s and its recognized expertise in agriculture and in decreasing population growth.

27. **Mr. Arif** (Indonesia) said that executive review and judicial review were the two main mechanisms used to ensure that local by-laws were in line with national laws and with the Covenant and that they did not contain discriminatory provisions. Under the executive review mechanism, the central Government reviewed by-laws and informed local governments that they must amend those that were incompatible. In 2014, about 50 such by-laws had been amended thus far. Under the judicial review mechanism, citizens who objected to the content of a by-law could bring the issue before the Supreme Court. The central Government was continuously developing guidelines for local governments to follow when drafting by-laws.

28. **Ms. Harkrisnowo** (Indonesia) said that the national human rights action plan included 137 programmes to be carried out by various government institutions at all levels. More than 400 subnational human rights committees had been established to ensure implementation of the plan, which covered issues such as water and sanitation, the right to health for vulnerable groups and housing for low-income families. The Government had no intention of limiting economic, social and cultural rights, but those rights should be fulfilled in accordance with the State's budgetary capacity and resources.

29. **Mr. Wibowo** (Indonesia) said that the fulfilment of obligations under the Covenant could not be disassociated from Government resources. The education budget might not have been sufficient in the past, but since 2003, it had constituted 20 per cent of the national budget, demonstrating that the Government was improving its implementation of the Covenant as its means increased.

30. **The Chairperson**, drawing the delegation's attention to the Committee's general comment No. 2 on international technical assistance measures, suggested that the State party might find helpful the advice it contained concerning the progressive implementation of the Covenant.

31. **Ms. Bras Gomes** welcomed the news that the bill on gender equality would be adopted by the end of 2014. She said that, in order to be fully in line with the Covenant, national legislation should incorporate all the prohibited grounds of discrimination, including the new additions, namely, sexual orientation and gender identity.

32. **Ms. Shin** asked whether, as part of the review of regulations on persons with disabilities, the Government would repeal the discriminatory provisions regarding the recruitment of teachers with disabilities. She also asked what entity would be responsible for collecting data on persons with disabilities. She wished to know whether the bill on gender equality provided for any temporary special measures to accelerate the achievement of de facto equality.

33. **The Chairperson**, pointing out that the Optional Protocol to the Covenant not only established a mechanism for individuals to claim their rights but was also a key driver of amendments to national legislation, asked whether the State party might reconsider its apparent unwillingness to ratify any of the complaints procedures and accede to the Optional Protocol. Given the impact of corruption on the enjoyment of human rights, he wished to know whether the entities working on those issues did so in partnership or, like in many countries, in silos.

34. **Mr. Nahar** (Indonesia) said that the case of the non-recruitment of teachers with disabilities had been brought before the Ombudsman and that the Ministry of Education and Culture would be reviewing its practice as a result. Over 50 of the 2,500 staff at the Ministry of Social Affairs had a disability and most of them served as instructors.

35. **Mr. Anshor** (Indonesia) said that elements of the bill on gender equality, namely, the 30 per cent quota of women candidates, had already been applied during the 2012 elections and that a number of parties had been disqualified for not meeting the quota.

36. **Ms. Bras Gomes**, citing the replies to the list of issues, said that the pro-jobs focus of the National Medium Term Development Plan (2004–2009) appeared to be the perfect model for sustainable growth and development. However, according to the World Bank Indonesia Jobs Report of 2010, jobs in the formal sector were not always better than those in the informal sector; in fact, over 80 per cent of formal sector workers did not have a contract and oral contracts were still legally possible. In that context, she asked why such an unstable situation was allowed to continue and whether there were plans to tackle it. She also asked what was holding back the adoption of the bill on domestic workers; whether the State party planned to ratify the International Labour Organization (ILO) Domestic Workers Convention, 2011 (No. 189); whether it intended to discuss the adoption of unemployment benefits; and whether it had considered establishing a social protection floor, as advocated by ILO.

37. **Ms. Cong** said that further explanations of the bill on domestic workers would be useful. She asked whether the State party had legislation on equal pay for equal work. Referring to paragraphs 84 and 85 of the replies to the list of issues, she asked whether

inspections of plantations, fisheries and mines had uncovered any occupational health and safety hazards and, if so, how they had been addressed.

38. **Mr. Ribeiro Leão**, referring to paragraph 74 of the initial report, asked how the new regulation on the regional minimum wage fitted in with the pro-job strategy mentioned in paragraph 51.

39. **Mr. Abashidze**, referring to reports that Law No. 13 of 2003 on Labour did not adequately address the resolution of labour disputes, asked whether any efforts were being made to update it. Since Law No. 40 of 2004 on the National Social Security System did not cover all categories of workers, what steps was the Government taking to expand its scope? He invited the delegation to comment on claims that there were insufficient labour inspectors. Given the large number of domestic workers in and from Indonesia, he urged the State party to adopt specific legislation to protect them and asked whether it was cooperating with countries of origin and destination in that connection.

40. **Ms. Shin** asked whether there was a system in place to oversee agencies that recruited migrant workers, what steps were being taken to narrow the considerable gender pay gap and whether all civil servants were banned from establishing trade unions.

41. **Mr. Atangana** asked why, despite the fact that violence against women was a common occurrence, the courts treated offenders so lightly and whether the legislation in force had any impact on reducing such violence.

42. **Ms. Cong**, pointing out that, according to the national statistics bureau, the number of people living in poverty in the provinces of Papua and West Papua was nearly three times the national average, asked what steps the Government was taking to address the issue and what their impact was. She also asked whether the programmes mentioned in paragraphs 168 and 169 of the initial report had a special focus on less developed parts of the country and particularly marginalized groups. Referring to data from the 2012 Demographic Health Survey, she asked why maternal mortality was on the rise and what measures the Government was planning to reverse the trend.

43. **Mr. Dasgupta** asked what legislative and public awareness steps were being taken or considered to combat the reportedly prevalent practice of female genital mutilation. Citing figures on tobacco use, especially the alarming increase among women, he asked what efforts were under way to discourage smoking, whether it was banned in public areas and whether the State party intended to accede to the World Health Organization (WHO) Framework Convention on Tobacco Control. Pointing out that Indonesia was well short of its Millennium Development Goals regarding drinking water and sanitation, he wished to know how it planned to meet its 2015 target, what was meant by "improved" versus "adequate" sanitation and how the delegation accounted for the considerable discrepancies between the statistics contained in the initial report and those produced by the Joint Monitoring Programme for Water Supply and Sanitation of WHO and the United Nation Children's Fund.

44. **Mr. Pillay** said that he was very disappointed at the lack of information on housing and asked whether there was a national housing policy, especially with regard to vulnerable groups, and whether the State party planned to provide any social housing. Recalling the Committee's general comment No. 7 on the right to adequate housing and citing known cases of land grabbing and the eviction of transgender persons, he disputed the State party's claims regarding free, prior and informed consent in the context of evictions and asked whether the Government was implementing the recommendations of the Special Rapporteur on adequate housing.

The meeting rose at 6 p.m.